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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|---|-------------|----------------------|---------------------|------------------|
| 09/954,789 | 09/12/2001 | Charlie Ricci | 018413-378 | 8809 |
| 38706 | 7590 | 09/23/2005 | EXAMINER | |
| FOLEY & LARDNER LLP 1530 PAGE MILL ROAD PALO ALTO, CA 94304 | | | SHARAREH, SHAHNAM J | |
| | | ART UNIT | | PAPER NUMBER |
| | | 1617 | | |

DATE MAILED: 09/23/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | |
|---------------------------------|------------------|--------------|
| Communication Re: Appeal | Application No. | Applicant(s) |
| | 09/954,789 | RICCI ET AL. |
| | Examiner | Art Unit |
| | Shahnam Sharareh | 1617 |

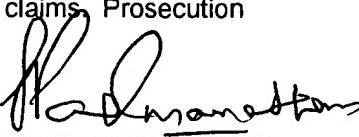
-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

1. The Notice of Appeal filed on _____ is not acceptable because:
 - (a) it was not timely filed.
 - (b) the statutory fee for filing the appeal was not submitted. See 37 CFR 41.20(b)(1).
 - (c) the appeal fee received on _____ was not timely filed.
 - (d) the submitted fee of \$_____ is insufficient. The appeal fee required by 37 CFR 41.20(b)(1) is \$_____.
 - (e) the appeal is not in compliance with 37 CFR 41.31(a)(1) in that no claim has been twice rejected.
 - (f) a Notice of Allowability, PTO-37, was mailed by the Office on _____.

2. The appeal brief filed on 11/22/2004 is NOT acceptable for the reason(s) indicated below:
 - (a) the brief and/or brief fee is untimely. See 37 CFR 41.37(a).
 - (b) the statutory fee for filing the brief has not been submitted. See 37 CFR 41.20(b)(2).
 - (c) the submitted brief fee of \$_____ is insufficient. The brief fee required by 37 CFR 41.20(b)(2) is \$_____.
 - (d) *Brief is not Compliant with 37 CFR 41.37* *SGJ*
The appeal in this application will be dismissed unless corrective action is taken to timely submit the brief and requisite fee. See 37 CFR 41.37(a)(1). Extensions of time may be obtained under 37 CFR 1.136(a). See 37 CFR 41.37(e).

3. The appeal in this application is DISMISSED because:
 - (a) the statutory fee for filing the brief as required under 37 CFR 41.20(b)(2) was not timely submitted and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (b) the brief was not timely filed and the period for obtaining an extension of time to file the brief under 37 CFR 1.136(a) has expired.
 - (c) a Request for Continued Examination (RCE) under 37 CFR 1.114 was filed on _____.
 - (d) other: _____.

4. Because of the dismissal of the appeal, this application:
 - (a) is abandoned because there are no allowed claims.
 - (b) is before the examiner for final disposition because it contains allowed claims. Prosecution on the merits remains CLOSED.
 - (c) is before the examiner for consideration.



SREENI PADMANABHAN
SUPERVISORY PATENT EXAMINER

Pursuant to the Order issued by the USPTO Board of Patent Appeals and Interferences mailed on August 16, 2005 ("the Order"), the Appeal Brief filed November 22, 2004 is declared defective because it is not compliant with the rules under 37 CFR § 41.37 (c). Applicant's attention is directed to page 4 of the Order, where the Board has articulated the sections missing from the Appeal Brief filed November 22, 2004.

Also, the Order returned the application to the Examiner to consider the substitute Appeal Brief. Accordingly, the Examiner's Answer mailed on April 5, 2005 has been vacated and a new Examiner's Answer will be filed in response to a substitute Appeal Brief in compliance with 37 CFR § 41.37.

To avoid dismissal of the appeal, appellant must submit an appeal brief that is compliant with the new rules within ONE MONTH or THIRTY DAYS from the mailing of this communication, whichever is longer. Extensions of time may be granted under 37 CFR 1.136.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shahnam Sharareh whose telephone number is 571-272-0630. The examiner can normally be reached on 8:30 am - 6:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreenivasan Padmanabhan, PhD can be reached on 571-272-0629. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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